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**Supreme Court of the United States**

**OCTOBER TERM, 1939**

**No. 16**

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**L. BOTELER, TRUSTEE OF RICHMAID CREAM-  
ERIES, INC., DEBTOR, PETITIONER,**

*vs.*

**RAY INGELS, DIRECTOR OF MOTOR VEHICLES  
OF THE STATE OF CALIFORNIA, ET AL**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT.**

---

**PETITION FOR CERTIORARI FILED MARCH 14, 1939.**

**CERTIORARI GRANTED APRIL 24, 1939.**



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 21, 1939.





[fol. 1] Names and Addresses of Attorneys omitted in printing.

[fols. 2-3] Citations in usual form showing service on David Schwartz omitted in printing.

[fol. 4]

**IN UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF CALIFORNIA, CENTRAL DIVISION**

No. 28563-C

IN THE MATTER OF RICHMAID CREAMERIES, INC., a corporation,  
Debtor

**Agreed Statement of Case—Filed February 10, 1938**

In order to shorten the record on appeal for the assistance of the court, it is stipulated and agreed by and between L. Boteler, Trustee in Bankruptcy of Richmaid Creameries, Inc., a corporation, and Ray Ingels as Director of Motor Vehicles of the State of California, and Howard E. Deems as Registrar of Motor Vehicles of the State of California, through their respective attorneys of record, that, subject to the approval of the court, the following constitutes an agreed statement of the above entitled matter as between said parties, and a statement of all of the evidence taken and proceedings had herein relating to that certain order by the District Court herein, dated January 3, 1938, ordering and enjoining said Ray Ingels and said Howard E. Deems and each of them, their agents, servants and employees, to issue to said L. Boteler the certificates of ownership, registration cards and California License plates upon certain motor vehicles, without the payment of the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, said agreed statement to be used on the appeal of said Ray Ingels and said [fol. 5] Howard E. Deems to the United States Circuit Court of Appeals for the Ninth Circuit from said order:

1

Prior to September 16, 1936, the above named debtor was engaged in the creamery business in the State of California. Amongst the assets of said debtor were certain milk and

ice cream routes, and twenty seven automobiles and trucks used in the business of said debtor, and particularly in connection with the making of deliveries upon said milk and ice cream routes.

## II

On September 16, 1936, the petition of the above named debtor was filed in the above entitled District Court, pursuant to the provisions of Section 77b of the Bankruptcy Act. On the same date, said petition was approved and John H. Chamness was appointed temporary trustee, with authority to operate the business of said debtor.

On September 23, 1936, pursuant to petition therefor duly filed by said temporary trustee, said District Court made its Order granting said temporary trustee permission to issue Trustee's Certificates to the amount of \$10,000 to raise funds for the use of said temporary trustee in the continuance and operation of the business of said debtor.

On October 16, 1936, said temporary trustee filed a report with said District Court of his operations of said business during the first month of his trusteeship. Said report shows that said trustee had borrowed \$2,000.00 on the afore-said certificates and that during said month his operation of said business had resulted in a loss of \$285.00.

[fol. 6] On December 22, 1936, pursuant to petition therefore filed and an order to show cause duly and regularly issued thereon, said District Court made its order directing the liquidation of the assets of the above named debtor, and appointed said John H. Chamness as temporary trustee for the purpose of such liquidation but with the same powers as previously given said trustee with regard to the operation of the business of said debtor, and further ordered that the administration of said estate generally be and the same was thereby referred to Ernest R. Utley, Referee in Bankruptcy, for further administration pursuant to the provisions of Section 77b of the Bankruptcy Act, as amended, and particularly with respect to subdivisions (c), (f) and (k) of said section.

On January 5, 1937, the schedule of assets and liabilities of said company was filed herein, showing assets of \$148,380.82 and liabilities of \$87,089.64, including said \$2,000.00 of Trustee's Certificates issued as hereinabove set forth.

On January 20, 1937, pursuant to notice duly and regularly given to the creditors of the above named debtor,

L. Boteler was appointed as liquidating trustee in Bankruptcy and immediately thereafter duly qualified and took possession of the assets of the debtor. Continuously since said time said L. Boteler has been and now is the duly qualified and acting trustee of said estate.

### III

Continuously during the month of January, 1937, and to and including February 27, 1937, said temporary trustee and said trustee, respectively, in order to preserve the full value of the business of the debtor as a going concern pending liquidation, continued to operate the business of said debtor and to make the usual deliveries of milk and ice cream upon the aforesaid milk and ice cream routes of said debtor, and, in that connection, operated the aforesaid automobiles and trucks upon the public highways of the State of California. There thereby became due to the State of California as and for license and registration fees upon said vehicles for the year 1937, fees in the amount of \$410.90. Said fees were due and payable on or before February 4, 1937.

### IV

During the operation of the business of the debtor by the trustee, as aforesaid, he issued checks against the estate herein, for the purchase of milk and for the payment of labor and other expenses in connection with the operation of said milk and ice cream routes to the extent of the funds in his hands. When there were insufficient funds in said estate to pay said checks, said trustee, on some occasions, cashed the same out of his own personal funds and held the checks until there were sufficient funds in the bankruptcy estate with which to pay the same. He did not pay to the State of California the 1937 license fees upon said vehicles, in the amount of \$410.90 prior to February 4, 1937.

### V

On February 28, 1937, said referee herein made an order confirming the sale of the aforesaid milk and ice cream routes, together with milk bottles, milk cases, ice cream cabinets, compressors and other equipment for the sum of \$8260.00. This was the first property sold in said liquidation, and the trustee did not thereafter attempt to operate the business of the debtor.

## VI

[fol. 8] On or about February 27, 1937, said trustee applied to the Department of Motor Vehicles of the State of California for the 1937 licenses upon the motor vehicles hereinabove referred to. Said Department of Motor Vehicles demanded the payment of both said fees and said penalties as a condition to the issuance of said 1937 licenses and the transfers requested by said trustee. Said trustee offered to pay said fees but refused to pay any of said penalties added thereto. The licenses and transfers were therefore denied said trustee.

## VII

On March 6, 1937, said trustee filed with said Referee a petition seeking an order to show cause against Ray Ingels as Director of the Department of Motor Vehicles of the State of California and Howard E. Deems, Registrar of Motor Vehicles of the State of California, and each of them, "to show cause why the penalties assessed against said motor vehicles should not be set aside and why the 1937 license plates upon said motor vehicles should not be issued and delivered to said trustee upon the payment of the fees prescribed by law exclusive of said penalties." Certain proceedings were had and evidence offered and received and the Referee made his findings of fact, conclusions of law and order in regard to said order to show cause, all as set forth in the Transcript of Record on appeal No. 8711 now pending before the United States Circuit Court of Appeals for the Ninth Circuit, which transcript is hereby referred to and incorporated herein as a part of this agreed statement. In said order the Referee granted the trustee certain relief, but said referee declined to make any order [fol. 9] directing said Department or said officers to receive the principal of said fees in full payment of all sums owing said Department on said vehicles, and declined to enjoin said Department or said officers from demanding the penalties prescribed by law as a condition to the registration or transfer of said vehicles in the State of California in 1937, but ordered, adjudged and decreed that said order be without prejudice to the right of the trustee to apply to the federal court for any injunctive relief which said trustee might deem appropriate under the provisions of the Bankruptcy Act and subdivision 3 of General Order XII.



## VIII

Thereafter, on or about June 26, 1937, said L. Boteler, trustee, filed with said District Court a petition for mandatory injunction as follows:

## PETITION

To the Honorable George Cosgrave, judge of the United States District Court, Southern District of California, Central Division:

Your petitioner respectfully applies for mandatory injunction and by this, his certified petition, and in his behalf, sets forth the following facts and cases for the issuance of such mandatory injunction, namely:

## I

That at all times mentioned herein, Richmaid Creameries, Inc., was a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal place of business in Wilmington, California.

[fol. 10]

## II

That on or about the 16th day of September, 1936, said Richmaid Creameries, Inc., debtor herein, filed a petition under the provisions of Section 77b of the National Bankruptcy Act, as amended, in the above entitled court; that on the said day, pursuant to said petition, the court appointed one, John H. Chamness, temporary trustee with authority to operate the business of the debtor and that the said John H. Chamness, as such temporary trustee, operated said business at a loss and that on the 10th day of December, 1936, a petition was filed herein seeking an order to require the temporary trustee to liquidate the estate of said debtor and that pursuant to said petition, this court, on the 22nd day of December, 1936, entered its order for the liquidation of the assets of said debtor and referred the case to the Honorable Ernest R. Utley, as referee, for further administration pursuant to the provisions of Section 77b of the National Bankruptcy Act.

## III

That on or about the 21st day of January, 1937, the petitioner herein was duly appointed Trustee in Bankruptcy

in said proceeding and immediately thereafter duly qualified and took possession of the assets of the debtor, including twenty-seven (27) trucks and automobiles hereinafter described.

#### IV

Your petitioner further alleges that the temporary trustee herein, ever since his appointment on the said 16th day of September, 1936, had no funds in his possession between the time of his appointment and the said 22nd day of December, 1936, with which to purchase the 1937 license plates [fol. 11] for said motor vehicles and further alleges that your petitioner, as such Trustee, had no funds between the date of his appointment on the said 21st day of January, 1937 and the 27th day of February, 1937, with which to purchase said license plates for said motor vehicles.

#### V

That at all times mentioned herein, Ray Ingels was and still is the Director of the Department of Motor Vehicles of the State of California, and Howard E. Deems was and still is the Registrar of Motor Vehicles of the State of California.

#### VI

That immediately after the consummation of a sale of some of the assets of said debtor, and, as soon as your petitioner had funds in his possession available for said purpose, your petitioner, on or about the 1st day of March, 1937, tendered and offered to pay to the Department of Motor Vehicles of and for the State of California, the proper registration fees and vehicle license fees for the year 1937 upon all of the motor vehicles hereinafter described and that the said Ray Ingels, as such Director of Motor Vehicles and the said Howard E. Deems, as such Registrar of Motor Vehicles, and each of them, have refused and still refuse to issue the 1937 license plates upon said motor vehicles to your petitioner as Trustee in Bankruptcy unless your petitioner pays in addition to the usual and proper fees hereinbefore mentioned and tendered, the penalties assessed against such motor vehicles, which penalties consist of one hundred per cent. of the registration fee and fifty per cent. of the vehicle license fee and which penalties are hereinafter enumerated, to wit, as follows:



Description of Vehicle	Engine Number	1936 License
Ford V-8	18-800655	2x7140
Ford-4	AA12550	K-6764
Ford V-8	1245685	K-6773
Ford V-8	18-725243	K-6770
Ford-4	AA4078994	K-6771
Ford-4	AA1958177	K-6772
Ford-4	AAB5057502	K-6767
Ford-4	AA3303515	K-6769
Ford V-8	1697695	K-7838
Ford-4	LB10372	K-6768
Ford-4	A287871	2Y8393
Chevrolet-6	T4648696	K-6766
Ford-4	AA4778199	K-6765
Homemade	DMV844687	76028
Ford V-8	18-1984288	1Y9493
Ford V-8	18-2003574	2Y8394
Dodge-6	T12-9416	7Y537
Ford V-8	1655069	2Y8396
Ford V-8	1294772	PCO4133
Chevrolet-6	K4831949	PCK6399
Dodge-4	A525823	2Y7141
Ford-4	AA3827503	K6925
Ford V-8	18-1294156	6Y6552
Ford V-8	18-1640707	2Y8395
International-6	HO33321	K2192
Terraplane-6	65611	2X7142

[fol. 13]

## VII

That the said Ray Ingels as such Director and the said Howard E. Deems as such Registrar of Motor Vehicles have demanded of and from the bankruptcy estate herein all of the aforesaid penalties in addition to the proper 1937 tax herein and that the said penalties herein assessed are not proper claims against the said bankrupt estate by reason of Section 57j of the Bankruptcy Act.

## VIII

That prior to the said 1st day of March, 1937, your petitioner had no funds available for the purpose of paying such registration and license fees and that your petitioner as such Trustee in Bankruptcy has undertaken and agreed to sell a number of said motor vehicles and that he has been unable to sell and dispose of the same by reason of the aforesaid penalties and by reason of the refusal of the said Ray Ingels, Director of Motor Vehicles and Howard E. Deems, Registrar of Motor Vehicles to issue said license.

plates upon the payment of the fees herein mentioned without such penalties and that your petitioner is unable to properly liquidate the assets of said bankrupt until the license plates upon said motor vehicles are duly issued and that great and irreparable injury and damage will be caused to the bankruptcy estate herein unless the license plates, certificates of ownership and registration cards are forthwith issued to your petitioner upon said motor vehicles.

[fol. 14]

IX

That your petitioner has heretofore, sold, pursuant to the order of this court, a number of the motor vehicles aforesaid and that he cannot deliver clear title to said motor vehicles for the reasons heretofore alleged; that as to the motor vehicles still unsold, your petitioner herein is unable to sell the same unless the license plates, certificates of ownership and registration cards are issued to your petitioner; that the Motor Vehicle Department of the State of California claims a lien upon all of said motor vehicles hereinbefore described and threatens to enforce said liens and take possession thereof and sell the same to satisfy said liens pursuant to Section 379 of the Vehicle Code of the State of California.

Wherefore your petitioner prays that a mandatory injunction issue out of and under the seal of this Honorable Court directed to the respondents above named, to wit, Ray Ingels, Director of Motor Vehicles of the State of California and Howard E. Deems, Registrar of Motor Vehicles of the State of California, and each of them, to issue the 1937 license plates, certificates of ownership and registration cards upon the motor vehicles described herein upon the tender and payment to the Motor Vehicle Department of the usual registration fees and license fees without the penalties provided by the Vehicle Code of the State of California or to show cause before this court at a specified time and place why they have not done so, and for such other and further relief as petitioner may be entitled to.

L. Boteler.

[fol. 15] STATE OF CALIFORNIA;  
County of Los Angeles, ss:

L. Boteler, being first duly sworn, deposes and says: That he is the petitioner in the above petition for manda-

tory injunction; that he has read the foregoing petition and knows the contents thereof, and the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

L. Boteler.

Subscribed and sworn to before me this 24th day of June, 1937. David Schwartz, Notary Public in and for said County and State.

## IX

Pursuant to said petition, said District Court issued its order as follows:

### ORDER

To The Motor Vehicle Department of the State of California, Ray Ingels, Director of Motor Vehicles of the State of California and Howard E. Deems, Registrar of Motor Vehicles of the State of California:

Whereas, it appears to this Court by the verified petition of L. Boteler, Trustee in Bankruptcy of Richmaid Creameries, Inc., a bankrupt, the party beneficially interested herein, that you, Ray Ingels, as Director of Motor Vehicles of the State of California and you, Howard E. Deems, as [fol. 16] Registrar of Motor Vehicles of the State of California, and the Motor Vehicle Department of the State of California, and each of you, refuse to issue the 1937 license plates, certificates of ownership and registration cards upon the motor vehicles described in the petition on file herein, upon the payment to the Motor Vehicle Department by the said L. Boteler, as such Trustee in Bankruptcy of the registration fees and license fees for the 1937 license plates upon such motor vehicles and it appearing from said petition that the petitioner herein is entitled to such 1937 license plates, certificates of ownership and registration cards, upon the payment of said registration fees and license fees upon said motor vehicles without the penalties provided for by the Vehicle Code of the State of California, and it appearing that great and irreparable damage and injury will be caused to the bankruptcy estate herein unless the license plates, certificates of ownership and registration cards are forthwith issued to said Trustee in Bankruptcy upon said motor vehicles, and it further appearing that the

petitioner herein has no plain, speedy or adequate remedy in the course of law;

Now, therefore, you are hereby commanded, ordered and enjoined, upon the receipt of this order, to forthwith issue to the petitioner herein, as such Trustee in Bankruptcy, the 1937 license plates, certificates of ownership and registration cards, upon the motor vehicles described in said petition upon the payment to the Motor Vehicle Department of the State of California, the registration fees and the license fees [fol. 17] for the year 1937 without the penalties provided by said Vehicle Code of the State of California or that you show cause before this Court at the courtroom thereof at Room 475, Pacific Electric Building, Sixth and Main Streets, County of Los Angeles, State of California, on the 6th day of July, 1937 at 10 o'clock A. M. of said day, why you have not done so.

It is further ordered that service of a copy of the Petition for Mandatory Injunction and this Order upon said Ray Ingels, Director of Motor Vehicles of the State of California, and said Howard E. Deems, Registrar of Motor Vehicles of the State of California, or either of them, made on or before the 1st day of July, 1937, shall be sufficient service.

Witness the Honorable George Cosgrave, Judge of the District Court of the United States, Southern District of California, Central Division.

Attest my hand and the seal of said court, this 26 day of June, 1937. George Cosgrave, Judge.

X

At the time fixed in said order, said respondents named therein filed their motion to dismiss the petition for mandatory injunction, as follows:

[fol. 18]

#### MOTION TO DISMISS

Come now respondents Ray Ingels, as Director, and Howard E. Deems, as Registrar, of the Department of Motor Vehicles of the State of California, against whom the petition for mandatory injunction is directed, and move this Honorable Court to dismiss said petition on the following grounds, to-wit:

I

That the Court is without jurisdiction of the subject of the action.

## II

That said petition does not state facts sufficient to constitute grounds for relief of any nature against the said Ray Ingels and Howard E. Deems, or either of them.

## III

That it appears upon the face of said petition that petitioner will not suffer great or irreparable injury.

## IV

That petitioner has a plain, adequate and complete remedy at law.

## V

That said petition does not state facts sufficient to constitute a valid cause of action in equity or at all against these respondents or either of them or at all.

## VI

That said petition does not state facts sufficient to justify the issuance of an injunction of any nature herein.

[fol. 19]

## VII

That this court does not have summary jurisdiction over the State of California or any of its officers, in this bankruptcy proceeding, to grant the relief prayed for or any relief; the trustee's remedy, if any, is by plenary suit.

Dated the 6th day of July, 1937.

U. S. Webb, Attorney General of the State of California, by John O. Palstine, Deputy Attorney General of the State of California, Attorneys for Respondents.

## XI

Said motion to dismiss was denied, whereupon said respondents filed their answer to said petition for mandatory injunction, as follows:

## ANSWER TO PETITION

Come now the respondents Ray Ingels, as Director, and Howard E. Deems, as Registrar, of the Department of Motor Vehicles of the State of California, and answer the



Petition for Mandatory Injunction filed herein on or about the 26th day of June, 1937, as follows, and make said answer their return to the Alternative Writ issued upon said Petition for Mandatory Injunction;

### I

Admit the allegations in Paragraph II of said Petition, but in this regard further allege that the order of this Court of December 22, 1936, directing the liquidation of the assets of the above named debtor, authorized said John H. Chamness, as temporary trustee, to continue to operate the business of said debtor until the appointment of a permanent trustee, and the said temporary trustee did so operate said [fol. 20] business from September 16, 1936, to January 20, 1937, inclusive, and in this connection did continuously use and operate, upon the public highways of the State of California, the motor vehicles particularly described in said Petition herein.

### II

Admit the allegations of Paragraph III of said Petition, but in this regard allege that the order appointing L. Boteler, petitioner herein, as trustee herein, authorized said trustee to continue to operate the business of said debtor and that said trustee did so operate said business from January 21, 1937, to February 27, 1937, inclusive, and in this connection did continuously use and operate, upon the public highways of the State of California, said motor vehicles particularly described in said Petition herein.

### III

Deny each and all of the allegations of Paragraph IV of said Petition.

### IV

Deny each and all of the allegations of Paragraph VI of said Petition, except that said respondents admit that they have, and each of them has, refused to issue the 1937 license plates authorizing the use of certain of the motor vehicles described in said paragraph upon the public highways of the State of California, until and unless the fees and penalties prescribed by law were paid to the Motor Vehicle Department of the State of California.

[fol. 21]

## V

Deny each and all of the allegations of Paragraph VII of said Petition.

## VI

Deny each and all of the allegations of Paragraph VIII of said Petition, except that said respondents admit that said petitioner as trustee herein has undertaken and agreed to sell a number of said motor vehicles.

## VII

Deny each and all of the allegations of Paragraph IX of said Petition, except that said respondents admit said petitioner has heretofore sold, pursuant to order of the Referee herein, a number of the aforesaid motor vehicles, and that the Motor Vehicle Department of the State of California claims to have and does have a lien upon all of said vehicles to secure the payment of the license fees and penalties prescribed by law.

As a Second Further and Separate Defense, said respondents allege and each of them alleges:

## I

That this Court has no jurisdiction in this summary proceeding, to grant the relief prayed for in said Petition, or any of said relief, or any relief at all, against these respondents, or either of them, upon the allegations in said Petition set forth.

Wherefore, said respondents pray, and each of them prays, that the petitioner take nothing by his Petition herein, and that said respondents, and each of them, may go hence with their costs and such other and further relief to said [fol. 22] respondents and each of them as to the Court may seem meet and proper.

Ray Ingels, Director of Motor Vehicles of the State of California, Howard E. Deeds, Registrar of Motor Vehicles of the State of California, Respondents. U. S. Webb, Attorney General of the State of California, by John O. Palestine, Deputy Attorney General, Attorneys for said Respondents.



## XII

Evidence, both oral and documentary, was thereupon offered and received at said hearing. Said evidence was the same as that offered and received in said proceeding before the Referee in Bankruptcy herein upon which the Referee's aforesaid order of June 14, 1937, was made. The statement of said evidence stipulated to and settled by the court in the appeal heretofore taken from the order of the above entitled District Court affirming said order of the Referee dated June 14, 1937, and incorporated in the transcript of record on said appeal, being No. 8711 before the United States Circuit Court of Appeals for the Ninth Circuit, is hereby referred to and incorporated herein as a part of this agreed statement, with the understanding that such statement of evidence may be used also in this appeal. The matter was duly submitted to said District Court and said court there-[fol. 23] after, on or about January 3, 1938, made its findings of fact and conclusions of law as follows:

## FINDINGS OF FACT

## I

The court finds that at all times mentioned herein, Richmaid Creameries, Inc., was a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal place of business in Wilmington, California.

## II

The court further finds that on or about the 16th day of September, 1936, said Richmaid Creameries, Inc., debtor herein, filed a petition under the provisions of Section 77b of the National Bankruptcy Act, as amended, in the above entitled court; that on the said day, pursuant to said petition, the court appointed one, John H. Chamness, temporary trustee with authority to operate the business of the debtor and that the said John H. Chamness, as such temporary trustee, operated said business at a loss and that on the 10th day of December, 1936, a petition was filed herein seeking an order to require the temporary trustee to liquidate the estate of said debtor and that pursuant to said petition, this court, on the 22nd day of December, 1936, entered its order for the liquidation of the assets of said debtor and referred the case

to the Honorable Ernest R. Utley, as referee, for further administration, pursuant to the provisions of Section 77b of the National Bankruptcy Act.

### III

The court further finds that on or about the 21st day of January, 1937, L. Boteler was duly appointed Trustee in [fol. 24] Bankruptcy in said proceeding and immediately thereafter duly qualified and took possession of the assets of the debtor, including twenty-seven (27) trucks and automobiles described in said petition.

### IV

The court further finds that the temporary trustee herein ever since his appointment on the 16th day of September, 1936, and continuing up to the 20th day of January, 1937, did not have sufficient funds with which to purchase the 1937 license plates upon said motor vehicles and the court further finds that the permanent trustee herein did not have sufficient funds between the date of his appointment on the 21st day of January, 1937 and the 27th day of February, 1937 with which to purchase said license plates for said motor vehicles.

### V

The court further finds that while the said temporary trustee and the said permanent trustee had some funds come into their possession that the same were insufficient to pay for the daily merchandise used by said trustee and that during the said trusteeship there became due and owing to thirty four (34) employees of said bankrupt, labor claims in the sum of \$4,633.53 which said trustee was unable to pay because of lack of funds; that during the same period the said trustee became indebted to twenty eight (28) preferred creditors by reason of merchandise sold and delivered to said bankrupt by said creditors in the total sum of \$5,665.73 which said trustee was unable to pay because of insufficient funds in his possession, and the court further finds that during the said period commencing on the 16th day of September, 1936 and ending January 19, 1937, the trustee sustained an operating loss of \$9,641.42.

[fol. 25]

### VI

The court further finds that at all times mentioned herein, Ray Ingels was and still is the Director of the Department

# MICRO CARD

TRADE MARK 

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of Motor Vehicles of the State of California, and Howard E. Deems was and still is the Registrar of Motor Vehicles of the State of California.

## VII

The court further finds that immediately after the consummation of a sale of some of the assets of said debtor, to-wit, on or about March 1, 1937, and, as soon as the trustee had funds in his possession available for said purpose, the trustee, on or about the 1st day of March, 1937, tendered and offered to pay to the Department of Motor Vehicles of and for the State of California, the proper registration fees and vehicle license fees for the year 1937 upon all of the motor vehicles described in said petition and that the said Ray Ingels, as such Director of Motor Vehicles and the said Howard E. Deems, as such Registrar of Motor Vehicles, and each of them, have refused to issue the 1937 license plates upon said motor vehicles to the trustee herein unless said trustee pays in addition to the usual and proper fees, the penalties assessed against such motor vehicles, which penalties consist of one hundred per cent of the registration fee and fifty per cent of the vehicle license fee.

## VIII

That prior to the said 1st day of March, 1937, the trustee had no funds available for the purpose of paying such registration and license fees and the court further finds that said [fol. 26] trustee had agreed to sell a number of said motor vehicles and that he has been unable to sell and dispose of the same by reason of the refusal of the said Ray Ingels, Director of Motor Vehicles and the said Howard E. Deems, as Registrar of Motor Vehicles of and for the State of California, to issue said license plates upon the payment of the fees owing thereon without such penalties; and the court further finds that the trustee herein is unable to properly liquidate the assets of said bankrupt estate until the license plates upon said motor vehicles are duly issued and that great and irreparable injury and damage will be caused to the bankruptcy estate herein unless the license plates, certificates of ownership and registration cards upon said motor vehicles are forthwith issued to said trustee.

## IX

The court further finds that pursuant to the order of the referee in bankruptcy herein a number of motor vehicles

aforesaid had been sold by the trustee herein and that the said trustee is unable to deliver clear title to said motor vehicles because of the refusal of the said Ray Ingels, Director of Motor Vehicles and the said Howard E. Deems, Registrar of Motor Vehicles of the State of California, to issue the license plates, certificates of ownership and registration cards thereon.

## CONCLUSIONS OF LAW

As Conclusions of Law, the court finds:

### I

That the Trustee in Bankruptcy is entitled to the certificates of ownership, registration cards and the 1937 license [fol. 27] plates upon the payment by the trustee of the registration fee and vehicle license fees for the year 1937 without the penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, California Statutes of 1935, Chapter 362, as amended.

### II

The court further finds that the said Trustee in Bankruptcy shall be and is hereby entitled to an order directing and enjoining said Ray Ingels as Director of Motor Vehicles and said Howard E. Deems, as Registrar of Motor Vehicles of the State of California; and each of them, their agents, servants and employees to issue to said Trustee in Bankruptcy, a certificate of ownership, registration card and 1937 license plate upon said motor vehicles upon the payment by said Trustee of the registration fee, and vehicle license fees for the year 1937 without the penalties provided by the said Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, California Statutes of 1935, Chapter 362, as amended.

Witness the Honorable George Cosgrave, Judge of the District Court of the United States, Southern District of California, Central Division.

Attest my hand and the seal of said court this 3rd day of January, 1938.

George Cosgrave, Judge.



[fol. 28] Not approved as to form, for reasons which will be stated in formal objections.

U. S. Webb, Attorney General, by John O. Palstine,  
Deputy Attorney General.

### XIII

Also, on said 3rd day of January, 1938, said District Court made and entered its decree herein as follows:

#### DECREE

It Is Hereby Ordreded, Adjudged and-Decreed:

That the respondents herein, Ray Ingels, Director of the Department of Motor Vehicles of the State of California and Howard E. Deems, Registrar of Motor Vehicles of the State of California, and each of them, their agents, servants and employees, be, and they are hereby ordered and enjoined to issue to the said petitioner, L. Boteler, Trustee in Bankruptcy of Richmaid Creameries, Inc., a certificate of ownership and registration card and the 1937 license plates, in the manner provided by the laws of the State of California, upon each of the following motor vehicles, or either of them, upon the payment to the said Motor Vehicle Department of the registration fee and vehicle license fee for the year 1937 without the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, California Statutes of 1935, Chapter 362, as amended.

[fol. 29]

Description of Vehicle	Engine Number	1936 License
Ford V-8	18-800655	2X7140
Ford-4	AA12550	K-6764
Ford V-8	1245685	K-6773
Ford V-8	18-725243	K-6770
Ford-4	AA4078994	K-6771
Ford-4	AA1958177	K-6772
Ford-4	AAB5057502	K-6767
Ford-4	AA3303515	K-6769
Ford V-8	1697695	K-7838
Ford-4	LB10372	K-6768
Ford-4	A287871	2Y8393
Chevrolet-6	T4648696	K-6766
Ford-4	AA4778199	K-6765
Homemade	DMV844687	76026
Ford V-8	18-1984288	1Y9493

Description of Vehicle	Engine Number	1936 License
Ford V-8	18-2003574	2Y8394
Dodge-6	T12-9416	7Y537
Ford V-8	1655069	2Y8396
Ford V-8	1294772	PC04133
Chevrolet-6	K4831949	PCK6399
Dodge-4	A525823	2Y7141
Ford-4	AA3827503	K6925
Ford V-8	18-1294156	6Y6552
Ford V-8	18-1640707	2Y8395
International-6	H033321	K2192
Terraplane-6	65611	2X7142

[fol. 30] Witness the Honorable George Cosgrave, Judge of the District Court of the United States, Southern District of California, Central Division.

Attest my hand and the seal of said court, this 3rd day of January, 1938.

George Cosgrave, Judge.

Approved As to Form without waiving right to object to Findings of Fact and Conclusions of Law.

U. S. Webb, Attorney General, by John O. Palestine, Deputy Attorney General, Attorneys for State of California, et al. David Schwartz, Attorney for L. Boteler, Trustee, U. S. Webb, Attorney General, by John O. Palestine, Deputy Attorney General, Attorneys for Ray Ingels, Director of Motor Vehicles of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California.

[fol. 31] IN UNITED STATES DISTRICT COURT

#### ORDER APPROVING AGREED STATEMENT OF FACTS

The foregoing agreed statement of facts, duly proposed and agreed upon by counsel for the respective parties, constitutes a correct statement of all the evidence herein relating to that certain order by the District Court herein dated January 3, 1938, as in said agreed statement more particularly referred to, and said agreed statement of facts is hereby approved and adopted as a full and complete statement of all the facts and proceedings upon which any appeal from said order of January 3, 1938, may be based.

Dated: Feb. 10, 1938.

Geo. Cosgrave, Judge.

[File endorsement omitted.]



[fol. 32] IN UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 28563-C

In the Matter of RICHMAID CREAMERIES, INC., a Corporation,  
Debtor

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL—Filed  
Feb. 2, 1938

To the Honorable George Cosgrave, Judge of the United  
States District Court, Southern District of California,  
Central Division:

Ray Ingels, as Director of the Motor Vehicle Department of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, feeling themselves aggrieved by the order of the above court dated January 3, 1938, ordering and enjoining them, their agents, servants and employees, to issue to L. Boteler, Trustee in Bankruptcy of Richmaid Creameries, Inc., certificates of ownership and registration cards and the 1937 license plates in the manner provided by the laws of the State of California, upon certain motor vehicles in said order described, upon the payment to said Motor Vehicle Department of the registration fee and vehicle license fee for the year 1937 without the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended,

[fol. 33] Pray for the Allowance of an Appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error filed herewith, and pray that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said order was based, duly authenticated, be sent to said Circuit Court of Appeals, and pray that an order be made fixing the amount of any bond required of appellants herein.

Dated: February 2nd, 1938.

U. S. Webb, Attorney General, by John O. Palestine,  
Deputy Attorney General, Attorneys for said proposed appellants.

## ORDER ALLOWING APPEAL

Upon reading the foregoing petition for appeal, and upon the files and records herein,

It is Ordered that an appeal be, and the same is hereby allowed to Ray Ingels as Director of the Motor Vehicle Department of the State of California, and Howard E. Deems as Registrar of Motor Vehicles of the State of California, to have the United States Circuit Court of Appeals for the Ninth Circuit review the order of this court dated January 3, 1938, ordering and enjoining said Ray Ingels as [fol. 34] Director of Motor Vehicles, and said Howard E. Deems, as Registrar of Motor Vehicles of the State of California, their agents, servants and employees, to issue certain motor vehicle license plates without the payment of the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended; and

It is Further Ordered that citation be issued as provided by law, and that a transcript of the record be prepared by the clerk of this court and transmitted to said Circuit Court of Appeals so that he shall have the same in said court within thirty days of this date.

It is Further Ordered that cost bond in said appeal be and the same is hereby fixed in the sum of Two Hundred Fifty Dollars (\$250.00), the clerk to approve said bond.

Dated: February 2, 1938.

Geo. Cosgrave, Judge.

[File endorsement omitted.]

[fol. 35] IN UNITED STATES DISTRICT COURT

No. 28563-C

ASSIGNMENT OF ERRORS—Filed Feb. 2, 1938

Come now Ray Ingels, as Director of the Motor Vehicle Department of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, and respectfully urge that the above entitled court erred in making its order of January 3, 1938, ordering and enjoining them, their agents, servants and employees, to issue certain motor vehicle license plates and

certificates of ownership and registration cards without the payment of the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, and present in connection with their petition for appeal from said order, the following assignments of error:

# I

That said court erred in failing to grant the motion of said respondents to dismiss the petition of the Trustee in Bankruptcy herein for mandatory injunction.

# II

That said court erred in granting the relief prayed for in said petition or any relief in the face of the affirmative defense raised by these appellants denying summary jurisdiction in said court.

# III

That said court erred in failing to find that said Trustees, and each of them, had operated upon the public highways of the State of California during 1937 and prior to February 4, 1937, the motor vehicles involved herein, and that such operation of such motor vehicles was in connection with the operation by the said Trustees of the business of said debtor and bankrupt, as alleged in the affirmative allegations in paragraphs I and II of the answer to petition for mandatory injunction.

# IV

That the findings of said court that neither of the Trustees herein had any funds with which to pay on or before February 4, 1937, the fees in question, and that the tender of fees was made as soon as the Trustee had funds in his possession "available" for that purpose, are contrary to the law, the evidence and records herein, and are mere conclusions.

# V

That the findings of said court that the Trustee herein tendered to the Department of Motor Vehicles of the State of California the "proper" registration fees and vehicle license fees for the year 1937 upon the vehicles here in question, and that said Department and the respondent officers thereof refused to issue the 1937 license plates upon

said vehicles unless said Trustee paid, in addition to the "usual and proper" fees, the penalties assessed against said vehicles, are contrary to the law, the evidence and records herein, and are mere conclusions.

## VI

That the findings of said court that the Trustee "has been unable to sell and dispose of" certain motor vehicles and is unable to deliver clear title thereto by reason of the refusal of said officers of the Department of Motor Vehicles to issue license plates thereon upon the payment of the principal of the fees without any penalties thereon for de-[fol. 37] linquency, and that the Trustee is unable to properly liquidate the assets of said bankrupt estate until the license plates upon said motor vehicles are duly issued, are contrary to the law, the evidence and records herein, and are mere conclusions.

## VII

That the finding of said court that great and irreparable injury and damage will be caused to this estate unless said plates are issued to the Trustee is contrary to the evidence and records herein, and is a mere conclusion.

## VIII

That said court erred in failing to find in favor of the respondents and appellants on the second and affirmative defense raised by said respondents, challenging the summary jurisdiction of said court.

## IX

That said court erred in failing to make its conclusion of law that upon the facts herein said court did not have summary jurisdiction to grant the relief prayed for by the Trustee, or any of said relief, or any relief at all.

## X

That the conclusion of law made by said court that the Trustee in Bankruptcy herein is entitled to the certificates of ownership, registration cards and 1937 license plates upon the payment by the Trustee of the registration fee and vehicle license fees for the year 1937, without the penalties

provided by the Vehicle Code of the State of California as [fol. 38] amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

## XI

That the conclusion of law of said court that said Trustee in Bankruptcy is entitled to an order directing and enjoining Ray Ingels, as Director of Motor Vehicles, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, and each of them, their agents, servants and employees, to issue to said Trustee in Bankruptcy a certificate of ownership, registration card and 1937 license plate upon the motor vehicles involved herein, upon the payment by said Trustee of the registration fee and vehicle license fee for the year 1937 without the penalties provided by said Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

## XII

That the order of said court, directing and enjoining said Ray Ingels, as Director of the Department of Motor Vehicles of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, and each of them, their agents, servants and employees, to issue to said Trustee in Bankruptcy herein a certificate of ownership and registration card, and the 1937 license plates upon the vehicles involved herein, in the manner provided by [fol. 39] the laws of the State of California upon the payment to said Motor Vehicle Department of the registration fee and vehicle license fee for the year 1937, without the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

U. S. Webb, Attorney General, by John O. Palstine,  
Deputy Attorney General, Attorneys for the pro-  
posed appellants.

[File endorsement omitted.]



[fol. 40] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 8761

In the Matter of RICHMAID CREAMERIES, INC., a corporation,  
Debtor,

RAY INGELS, Director of Motor Vehicles of the State of California and Howard Deems, as Registrar of Motor Vehicles of the State of California, Appellants,

vs.

L. BOTELEK, Trustee of Richmaid-Creameries, Inc., a corporation, Debtor, Appellee

PETITION FOR APPEAL—Filed February 2, 1938

To the Honorable Justices of the above entitled court:

The Honorable Geo. Cosgrave, Judge of the District Court of the United States, Southern District of California, Central Division, having, on January 3, 1938, made an order in the above bankruptcy proceeding, directing and enjoining Ray Ingels, Director of Motor Vehicles of the State of California, and Howard E. Deems, Registrar of Motor Vehicles of said State, and each of them, their agents, servants and employees, to issue to L. Boteler, trustee in bankruptcy [fol. 41] herein, the California certificates to file in said bankruptcy proceeding their claim of ownership, registration cards, and vehicle license plates, upon certain motor vehicles owned by the bankrupt herein, upon the payment to the Motor Vehicle Department of the State of California of the registration and license fees required by the Vehicle Code and the Vehicle License Fee Act of said State, without the payment of the penalties prescribed by said Acts for delinquency, and overruling the objection of said officers to the summary jurisdiction of said Court, and said officers feeling themselves aggrieved by said order of said judge,

Said Ray Ingels, Director of Motor Vehicles of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, do hereby petition for the Allowance of an appeal from said order of said District Court to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons and upon the grounds set

forth in the assignment of errors filed herewith, and said petitioners pray that their appeal may be allowed and a citation issued directed to L. Boteler, trustee of Richmaid Creameries, Inc., a corporation, debtor, commanding him to appear before said United States Circuit Court of Appeals, for the Ninth Circuit, to do and receive what may be required in the interests of justice in the premises, and that a transcript of the record, exhibits, statement of evidence, stipulations, pleadings, and all proceedings herein, duly authenticated, may be transmitted to said United States Circuit Court of Appeals, for the Ninth Circuit, or for such other and further relief as may be meet and proper in the premises.

[fol. 42] Attached hereto, marked Exhibit "A", and hereby made a part hereof as though set forth herein in full, is a copy of the agreed statement of the case upon which it is proposed to submit said appeal, if allowed by this Court.

Dated: February 1, 1938.

U. S. Webb, Attorney General, by John O. Palstine, Deputy Attorney General, Attorneys for Ray Ingels, Director of Motor Vehicles of the State of California, and Howard E. Deems, Registrar of Motor Vehicles of the State of California, Petitioners for appeal.

[File endorsement omitted.]

(Clerk's Note: Agreed statement referred to above as "Exhibit 'A'" is not printed here, for it is already set forth in this transcript at pages 4 to 31.)

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 8761

ASSIGNMENT OF ERRORS—Filed February 2, 1938

Come now Ray Ingels, as Director of the Motor Vehicle Department of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, and respectfully urge that the above entitled court erred in making its order of January 3, 1938, ordering and enjoining them, their agents, servants and employees, to issue certain motor vehicle license plates and certificates of



ownership and registration cards without the payment of the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, and present in connection with their petition for appeal from said order, the following assignments of error:

### I

That said court erred in failing to grant the motion of said respondents to dismiss the petition of the Trustee in Bankruptcy herein for mandatory injunction.

### II

That said court erred in granting the relief prayed for in said petition or any relief in the face of the affirmative defense raised by these appellants denying summary jurisdiction in said court.

### III

That said court erred in failing to find that said Trustees, and each of them, had operated upon the public highways of the State of California during 1937 and prior to February 4, 1937, the motor vehicles involved herein; and that such operation of such motor vehicles was in connection with the operation by the said Trustees of the business of said debtor and bankrupt, as alleged in the affirmative allegations in paragraphs I and II of the answer to petition for mandatory injunction.

### IV

That the findings of said court that neither of the Trustees herein had any funds with which to pay on or before February 4, 1937, the fees in question, and that the tender of fees was made as soon as the Trustee had funds in his possession "available" for that purpose, are contrary to the law, the evidence and records herein, and are mere conclusions.

### V

That the findings of said court that the Trustee herein tendered to the Department of Motor Vehicles of the State of California the "proper" registration fees and vehicle license fees for the year 1937 upon the vehicles here in question, and that said Department and the respondent offi-

cers thereof refused to issue the 1937 license plates upon said vehicles unless said Trustee paid, in addition to the "usual and proper" fees, the penalties assessed against said vehicles, are contrary to the law, the evidence and records herein, and are mere conclusions.

## VI

That the findings of said court that the Trustee "has been unable to sell and dispose of" certain motor vehicles and is unable to deliver clear title thereto by reason of the refusal of said officers of the Department of Motor Vehicles to issue license plates thereon upon the payment of the principal of the fees without any penalties thereon for delinquency, and that the Trustee is unable to properly liquidate the assets of said bankrupt estate until the license plates upon said motor vehicles are duly issued, are contrary to the law, the evidence and records herein, and are mere conclusions.

## VII

That the findings of said court that great and irreparable injury and damage will be caused to this estate unless said plates are issued to the Trustee is contrary to the evidence and records herein, and is a mere conclusion.

## VIII

That said court erred in failing to find in favor of the respondents and appellants on the second and affirmative defense raised by said respondents, challenging the summary jurisdiction of said court.

## IX

That the said court erred in failing to make its conclusion of law that upon the facts herein said court did not have summary jurisdiction to grant the relief prayed for by the Trustee, or any of said relief, or any relief at all.

## X

That the conclusion of law made by said court that the Trustee in Bankruptcy herein is entitled to the certificates of ownership, registration cards and 1937 license plates upon the payment by the Trustee of the registration fee [fol. 46] and vehicle license fees for the year 1937, without

the penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

## XI

That the conclusion of law of said court that said Trustee in Bankruptcy is entitled to an order directing and enjoining Ray Ingels, as Director of Motor Vehicles, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, and each of them, their agents, servants and employees, to issue to said Trustee in Bankruptcy a certificate of ownership, registration card and 1937 license plate upon the motor vehicles involved herein, upon the payment by said Trustee of the registration fee and vehicle license fee for the year 1937 without the penalties provided by said Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

## XII

That the order of said court, directing and enjoining said Ray Ingels, as Director of the Department of Motor Vehicles of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of the State of California, [fol. 47] and each of them, their agents, servants and employees, to issue to said Trustee in Bankruptcy herein a certificate of ownership and registration card, and the 1937 license plates upon the vehicles involved herein, in the manner provided by the laws of the State of California upon the payment to said Motor Vehicle Department of the registration fee and vehicle license fee for the year 1937, without the penalty and/or penalties provided by the Vehicle Code of the State of California as amended, and the Vehicle License Fee Act of the State of California as amended, is not supported by the evidence or the findings herein, and is contrary to law and in excess of said court's jurisdiction.

U. S. Webb, Attorney General, by John O. Palstine,  
Deputy Attorney General, Attorneys for the Proposed Appellants.

[File endorsement omitted.]

[Endorsed]: Filed R. S. Zimmerman Clerk at 18 min. past 11 o'clock Feb. 15, 1938 a. m. By E. L. Smith, Deputy Clerk.

[fol. 48] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—February 11, 1938

Upon consideration of the petition of Ray Ingels, Director of Motor Vehicles of the State of California, et al., for allowance of appeal herein under section 24(b) of the Bankruptcy Act, filed February 2, 1938, and of the assignments of error thereon, filed therewith, and by direction of the court,

[fol. 49] It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the District Court of the United States for the Southern District of California, Central Division, made on January 3, 1938, be, and hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars (\$250.00) with good and sufficient security, within ten days from date.

It Is Further Ordered that since this is the second appeal in this cause, if a cost bond has heretofore been given on the appeal first allowed in this cause then no additional cost bond need be given on this appeal.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 11th day of February, A. D. 1938.

Paul P. O'Brien, Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 18 min. past 11 o'clock Feb. 15, 1938 a. m. By E. L. Smith, Deputy Clerk.

[fol. 50] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. 28563-C

STIPULATION IN LIEU OF PRAECIPE—Filed February 17, 1938

To the Clerk of the Above Entitled Court:

We hereby respectfully request you to prepare and certify to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the transcript of record on the appeal to said Circuit Court to reverse the decree and order made by said District Court on January 3, 1938, directing and enjoining Ray Ingels, as Director of Motor Vehicles of the State of California, and Howard E. Deems, as Registrar of Motor Vehicles of said State to do and perform certain acts, and include in said transcript the following papers and documents on file in said District Court:

1. Agreed Statement of Case.
2. Petition for appeal and order allowing same, and assignments of error, filed in the United States District Court.
3. Citation issued by said District Court.
4. Copies of Petition for Appeal, assignments of error and order allowing appeal, filed in the United States Circuit Court of Appeals for the Ninth Circuit.
5. Copy of Citation issued by said Circuit Court.
6. This Praecipe.





It is hereby stipulated that the foregoing shall constitute the transcript of record herein on this appeal. It is further stipulated that in lieu of copying the names and titles of the court, the title and number to the cause, the same may, in said transcript of record on this appeal be abbreviated as follows: (Title of court and cause).

Dated: February 14, 1938.

DAVID SCHWARTZ

Attorney for L. Boteler, Trustee in Bankruptcy,  
appellee;

U. S. WEBB;

Attorney General,

By JOHN O. PALSTINE,

Deputy Attorney General,

Attorneys for Ray Ingels, as Director of Motor  
Vehicles of the State of California, and Howard  
E. Deems, as Registrar of Motor Vehicles of the  
State of California.

[Endorsed]: Filed R. S. Zimmerman Clerk at  
13 min. past 3 o'clock, Feb. 17, 1938 P. M. By M. J.  
Sommer, Deputy Clerk.

[Title of District Court and Cause.]

### CLERK'S CERTIFICATE

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 51 pages, numbered from 1 to 51, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation in the United States District Court; citation in the United States Circuit Court; agreed statements of the case; petition for appeal and order allowing appeal and assignment of errors in the United States District Court; petition for appeal, assignment of errors, and order allowing appeal in the United States Circuit Court, and stipulation in lieu of praecipe.

I do further certify that the amount paid for printing the foregoing record on appeal is \$89.60 and that said amount has been paid the printer by the appellants herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to \$12.30 and that said amount has been paid me by the appellants herein.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 1st day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-second.

[Seal]

R. S. ZIMMERMAN,  
Clerk of the District Court of the  
United States of America, in  
and for the Southern District of  
California.

By EDMUND L. SMITH,  
Deputy.

[Endorsed]: Printed Transcript of Record. Filed  
Mar. 2, 1938. Paul P. O'Brien, Clerk.



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No. 8761

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IN THE

**United States Circuit Court of Appeals**

**For the Ninth Circuit**

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In the Matter of /

**RICHMAID CREAMERIES, INC.,**

a corporation,

Debtor.

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**RAY INGELS, Director of Motor Vehicles of the  
State of California, and HOWARD E. DEEMS,  
as Registrar of Motor Vehicles of the State of  
California,**

Appellants,

vs.

**L. BOTELER, Trustee of RICHMAID CREAM-  
ERIES, INC., a corporation,**

Appellee.

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**Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division.**

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**PROCEEDINGS HAD IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.**

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[Clerk's Note: This cause was consolidated with companion cause No. 8711, Ingels, et al. v. Boteler, for briefing, argument and decision in the United States Circuit Court of Appeals for the Ninth Circuit. Accordingly, there are not reprinted here, the order of submission, order directing filing of opinion and the opinion, which cover both companion causes, and which are printed at pages 129 to 144 of the printed proceedings in cause No. 8711.]

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United States Circuit Court of Appeals  
for the Ninth Circuit

No. 8761

RAY INGELS, etc. et al.,

Appellants,

vs.

L. BOTELER, Trustee etc.,

Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order

of the said District Court in this cause be, and hereby is, reversed with directions to order the registration and license fees and accrued penalties paid, or, in the alternative, ~~to permit~~ the motor vehicles to be disposed of subject to the lien of the state of California for the unpaid taxes and penalties, with costs in this court in favor of appellants and against appellee.

It is further ordered, adjudged, and decreed by this Court, that the appellants recover against the appellee for their costs herein expended; and have execution therefor.

[Endorsed]: Filed and entered Dec. 15, 1938.  
Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT, TO RECORD CERTIFIED UN-  
DER RULE 38 OF THE REVISED RULES  
OF THE SUPREME COURT OF THE  
UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing fifty-eight (58) pages, numbered from and including 1 to and including 58, together with order of submission, order directing filing of opinion, and opinion, of this court in above cause, now appearing at pages 129 to 144 of the printed record in companion cause, No. 8711, Ingels, etc., et al. vs. Boteler, Trustee, etc., which said order of submission, order directing filing of opinion, and opinion are adopted hereby as though set forth herein, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 3rd day of March, A. D. 1939.

[Seal]

PAUL P. O'BRIEN,

Clerk.



## [fol. 60] SUPREME COURT OF THE UNITED STATES

## ORDER ALLOWING CERTIORARI—Filed April 24, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Endorsed on cover: File No. 43,230; 43,231. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 15. L. Boteler, Trustee of the Estate of Richmaid Creameries, Inc., Debtor, Petitioner, vs. Ray Ingels, Director of Motor Vehicles of the State of California, et al. Term No. 16. L. Boteler, Trustee of Richmaid Creameries, Inc., Debtor, Petitioner, vs. Ray Ingels, Director of Motor Vehicles of the State of California, et al. Petition for writs of certiorari and exhibits thereto. Filed March 14, 1939. Term No. 15, O. T., 1939; 16, O. T., 1939.

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# MICRO CARD

TRADE MARK 

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